

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	ICC Docket No. 13-0589
vs.)	
)	
Commonwealth Edison Company)	
Investigation Into Customer Refunds for)	
Payments Made Under Invalidated Riders)	

**DIRECT TESTIMONY OF MICHAEL L. BROSCHE
ON BEHALF OF THE
PEOPLE OF THE STATE OF ILLINOIS**

AG Exhibit 1.0R

Clean Version

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DIRECT TESTIMONY OF MICHAEL L. BROSCHE

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EXHIBIT LIST

AG Exhibit No. 1.1 Summary of Qualifications

AG Exhibit No. 1.2 Prior Testimony Listing

AG Exhibit No. 1.3 ComEd Tariff, Rider AMP, ILL.C.C. No. 4, 1st Revised
Sheet No. 626, filed on October 9, 2008, ComEd response
to AG 2.09 Attachment 1.

AG Exhibit No. 1.4 Rider AMP Refund Calculation

AG Exhibit No. 1.5R ComEd responses to ST 1.01 and ST 2.01

AG Exhibit No. 1.6R ComEd Response to AG 2.08, Attachments 1 and 2

AG Exhibit No. 1.7R ComEd Response to AG 4.01, Attachment 1

AG Exhibit No. 1.8R ComEd Response to AG 4.02

1 **I. INTRODUCTION / SUMMARY**

2

3 **Q. Please state your name and business address.**

4 A. My name is Michael L. Brosch. My business address is PO Box 481934, Kansas
5 City, Missouri 64148-1934.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a principal in the firm Utilitech, Inc., a consulting firm engaged primarily in
9 utility rate and regulation work. The firm's business and my responsibilities are
10 related to the conduct of regulatory projects for utility regulation clients. These
11 services include rate case reviews, cost of service analyses, jurisdictional and class
12 cost allocations, financial studies, rate design analyses, utility reorganization
13 analyses, the design and administration of alternative regulation mechanisms and
14 focused investigations related to utility operations and ratemaking issues.

15 **Q. On whose behalf are you appearing in this proceeding?**

16 A. I am appearing on behalf of the People of the State of Illinois represented by the
17 Attorney General ("Attorney General", "AG" or "the People").

18 **Q. Will you summarize your educational background and professional experience**
19 **in the field of utility regulation?**

20 A. Yes. AG Exhibit No. 1.1 is a summary of my education and professional
21 qualifications. I have testified before utility regulatory agencies in Arizona,
22 Arkansas, California, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Michigan,
23 Missouri, New Mexico, Ohio, Oklahoma, Texas, Utah, Washington, and Wisconsin
24 in regulatory proceedings involving electric, gas, telephone, water, sewer, transit,
25 and steam utilities. A listing of my previous testimonies in utility regulatory

proceedings is set forth in AG Exhibit No. 1.2. As noted in this listing, I have testified in numerous major Illinois proceedings before the Illinois Commerce Commission (“the Commission” or “the ICC”), including multiple cases involving Peoples Gas Light & Coke Company, North Shore Gas Company, Commonwealth Edison Company (“ComEd”) and the Ameren Illinois Utilities, including the initial and subsequent rounds of formula rate case proceedings for ComEd and Ameren Illinois, Docket Nos. 11-0721, 12-0321, 13-0318, 12-0001, 12-0293 and 13-0301. In addition, I participated and sponsored testimony in ComEd Docket No. 07-0566 and 09-0263, the docket in which ComEd’s forecasted AMI Pilot costs were submitted for Commission review, and in ComEd’s last general rate case, Docket No. 10-0467. In Docket No. 10-0467, recovery of certain Advanced Metering Infrastructure (“AMI”) Pilot Program costs was allowed within the test-year revenue requirement, including amounts recorded as test year costs as well as AMI costs previously deferred for recovery pursuant to the Company’s new “Bridge Tariff.”

Q. What is the purpose of your testimony in this docket?

A. I understand that the Commission opened this docket to determine whether, and to what extent, customers of ComEd are entitled to refunds for payments made pursuant to Riders AMP and AMP-CA, the extent and amount of any refund, and the mechanism for awarding any refund.¹ My testimony addresses these questions and quantifies the appropriate amount of customer refunds in connection with the Company’s charges to customers pursuant to Rider AMP, while recommending that no refunds are appropriate in connection with Rider AMP-CA.

¹ Docket No. 13-0589, *Order Commencing Investigation*, page 2.

49 **Q. Please summarize the recommendations that are set forth in your testimony.**

50 A. My testimony recommends that ComEd be ordered to refund to customers the entire
51 amount that the Company collected through Rider AMP on and after September 30,
52 2010, with interest at an annual rate of 0.5 percent in 2010 and 2011, and with zero
53 interest thereafter. The resulting refund should be no less than \$14.6 million as of
54 December of 2013, and should be returned to ComEd customers in the form of bill
55 credits as soon as practical after the Commission's Order is issued in this docket.

56 With regard to Rider AMP-CA, the Commission should require no refunds
57 because none of the Company's non-fuel expenses or AMI Pilot investment costs
58 were recovered through Rider AMP-CA. Instead, Rider AMP-CA served as the
59 tariff through which experimental rates for energy supply used by participating
60 customers were billed and recovered.²

61 **Q. What information have you relied upon in formulating your**
62 **recommendations?**

63 A. I relied upon the September 30, 2010 Court Opinion in *Commonwealth Edison v.*
64 *Illinois Commerce Comm'n*, 405 Ill. App. 3d 389 (2010), (*ComEd*) wherein the
65 Commission's decision in ICC Docket No. 07-0566 to allow ComEd to recover
66 advanced metering infrastructure or "system modernization" costs through a Rider
67 ("SMP") was reversed and found to constitute improper single-issue ratemaking;
68 the March 19, 2012 Mandate of the Court in *People of the State of Illinois, ex rel.*
69 *Madigan v. Illinois Commerce Comm'n*, 2012 IL App (2d) 100024, reviewing the
70 Commission's decision in ICC Docket No. 09-0263; the tariff ComEd filed on
71 October 9, 2008 implementing the Commission's approval of Rider SMP in Docket

² ComEd responses to data requests ST 1.01, AG 2.04 and AG 2.09.

No. 07-0566 but renamed “Rider AMP,” attached as AG Exhibit 1.3,³ and my previously submitted testimony and the other evidence filed with the Commission in Docket No. 09-0263, where the specific charges were established for the renamed Rider AMP. I also reviewed and relied upon ComEd’s Verified Petition for Special Permission to implement tariff revisions known as the “Bridge Tariff” and the corresponding Commission approval granted on December 3, 2010 in Docket No. 10-0597, as well as the Commission’s Order in Docket No. 10-0467. I also relied upon ComEd’s responses to Staff and Attorney General data requests issued in this Docket. Finally, I rely upon my prior experience with the regulation of public utilities over the past 35 years, including significant experience in Illinois under both traditional rate cases and annual formula ratemaking that is now employed by ComEd.

Q. Have you prepared any Exhibits to summarize the refund obligation being proposed in your testimony?

A. Yes. I prepared an Exhibit to quantify ComEd’s Rider AMP refund obligation as of December 31, 2012⁴, the date when ComEd stopped billing and collecting Rider AMP charges from customers. AG Exhibit 1.4 sets forth a monthly summary of ComEd charges to ratepayers that were billed pursuant to Rider AMP and that should now be refunded to ratepayers. The monthly amounts in columns (a) through (p) on AG Exhibit 1.4 were derived from the Company’s response to Commission Staff data request ST 2.01. To these Company-reported amounts, I added “Monthly Interest” in column (q) and then calculated the “Cumulative

³ Rider AMP, Advanced Metering Program Adjustment, ILL.C.C. No. 4, 1st Revised Sheet No. 626, Attachment 01 to data request AG 2.09.

⁴ Unless an interest rate above zero is determined to be applicable to refund amounts after 2012, the refund balance at that date will remain unchanged until refunds occur.

Refundable Balance” amount in column (r). These calculations are described in more detail in the next section of this testimony.

II. REFUND AMOUNT CALCULATION.

Q. What is the basis of the Rider AMP refundable amount you have calculated?

A. The amounts set forth on AG Exhibit 1.4 include the entire amount of Rider AMP revenue that was billed to ComEd customers from September 30, 2010 and forward, excluding the amounts of any estimated unbilled revenue entries ComEd recorded during that time. I am advised by AG counsel that, on September 30, 2010, the Illinois Appellate Court reversed the Commission’s Rider SMP authorization, which ComEd renamed as Rider AMP in its October, 2008 tariff filing. The Court found that the rider authorization violated the rule against single-issue ratemaking. As a result, all amounts billed by ComEd pursuant to its renamed Rider AMP, on and after September 30, 2010 were not properly and reasonably billed to ratepayers and should now be refunded.

Q. Did ComEd provide the amounts you have relied upon in AG Exhibit 1.4?

A. Yes. As noted previously, the monthly amounts in columns (a) through (p) on AG Exhibit 1.4 were derived from the Company’s response to Commission Staff data request ST 2.01. In this data request, ComEd responded to the question, “Referring to the Company’s DR response ST 1.01_Attach 1, please provide the billed vs. unbilled revenue breakdown for the monthly amounts shown on pages 1 and 2 of the referenced DR response.” In the earlier response to ST 1.01, ComEd provided what the Company described as “...a summary from ComEd’s general ledger of revenues recorded by delivery class for Rider AMP adjustments during October 2010 through

December 2012. Revenue recorded for the month of October 2010 includes billing from meter reading days September 29, 2010 and September 30, 2010. The revenue related to September 29, 2010 has been removed from the total revenues received to show the amounts recorded from September 30, 2010 and forward.” I have included in AG Exhibit 1.5R a complete copy of the Company’s response to ST 2.01 with its Attachment 1.

Q. Why have you excluded the unbilled revenue amounts shown on pages 1 and 3 of ComEd’s response to data request ST 2.01?

A. Unbilled revenue accruals are part of a utility’s overall recorded revenues, based upon estimated amounts of energy delivered to customers at each month end, where no billings to customers have yet occurred because of cycle billing procedures. The unbilled revenue amounts therefore do not represent actual charges to customers on bills. In order to base the refund calculation upon actual amounts billed to customers, my calculations exclude the net effect of ComEd’s unbilled revenue estimates upon the total recorded Rider AMP revenue stream. Excluding unbilled revenues reduces the amount of revenue recognized as refundable by the \$33,318 amounts shown in data request ST 2.01, Attachment 1, Subpage 3 of 3.

Q. What is the basis for the interest rate you have applied to the cumulative monthly billed Rider AMP revenues in AG Exhibit 1.4?

A. The interest rates used in AG Exhibit 1.4 are summarized in the upper right corner and are based upon the Commission’s approved interest rate applied to customer deposits that are held by Illinois utilities.

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143
144 **III. FORMULA RATE CASE REVENUE CREDITS.**
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146 **Q. Are you aware of any claimed offsets to the Company's Rider AMP refund**
147 **obligation that ComEd believes to be appropriate?**

148 A. Yes. I understand, based upon ComEd's response to data request AG 2.08, that the
149 Company believes any Rider AMP refund obligation should be reduced to
150 recognize certain revenue credits of \$4,744,000 in 2011 and \$426,000 in 2012 that
151 were included within the Other Revenue amount that was credited in determining
152 the formula revenue requirements calculated in formula rate Docket Nos. 12-0321
153 and 13-0318, respectively. According to its response:

154 ComEd included these revenue credits in ICC Docket Nos. 12-0321 and
155 ICC Docket No. 13-0318 in recognition that its AMI pilot costs were
156 included in those revenue requirements...[b]oth of the revenue credits
157 were part of the revenue requirements approved by the Commission in
158 these dockets and were included so as not to double recover these costs.
159 I have included in AG Exhibit 1.6R a complete copy of the Company's response to
160 data request AG 2.08 with attachments.

161 **Q. Should the Commission reduce the Rider AMP amounts billed and collected**
162 **by ComEd from the refund obligation because of the accounting for AMI Pilot**
163 **Program costs and revenues that was included within recent formula rate**
164 **cases?**

165 A. No. The Company has not demonstrated that such an offset is appropriate.
166 Clearly, ComEd was aware of the Appellate Court Opinions addressing the rider
167 recovery of Rider AMP revenues when it submitted its formula rate update filings,

and ComEd elected to include within its formula rate calculations certain revenues that are subject to refund. Formula ratemaking relies upon the best available accounting information recorded within the Company's books in each calendar year. It would not be appropriate to revisit the amounts of AMI costs and revenues included in prior ComEd formula rate cases, given that the final rates approved by the Commission in Docket Nos.12-0321 and 13-0318 were not designated as subject to refund and are not subject to later revision if recorded input accounting data is later found to be incomplete or inaccurate.

Q. Is it necessary to retroactively review ComEd's accounting for Rider AMP revenues as they impacted previously determined formula rate revenue requirement calculations?

A. No. In my opinion, the Rider AMP revenues billed and collected by ComEd relate to traditional cost of service regulation prior to the inception of annual formula rate procedures in Illinois. The Rider AMP refund obligation stems from Appellate Court action and predates formula ratemaking. It would be improper for the Commission to determine that refunds of Rider AMP revenues should not occur or be reduced because of how ComEd accounted for those revenues in its 2011 and 2012 formula rate case revenue requirements.

Q. Is it common for utilities to record accounting accruals whenever revenues are collected that are expected to ultimately be refunded to customers?

A. Yes. When it is probable that revenues being charged to customers will ultimately be subject to a refund order, Generally Accepted Accounting Principles ("GAAP") require that the liability for such refunds be recognized on the utility's books.

191 **Q. Has ComEd recognized any refund obligation for Rider AMP revenues on its**
192 **books?**

193 A. Yes. ComEd recorded a provision for rate refunds associated with the revenues it
194 billed and collected from customers pursuant to Rider AMP that were apparently
195 expected by the Company to be refunded to ratepayers starting in September of
196 2010. According to the Company's response to data request AG 4.01, monthly
197 entries were made from September of 2010 through August of 2011 to accrue as a
198 liability the full amount of Rider AMP revenues that were billed to customers and
199 subject to refund. These accruals had the effect of removing from the Company's
200 books the Rider AMP revenues in these months. Then, in September of 2011, the
201 cumulative amount of these accrued provisions for rate refund were inexplicably
202 reversed on the Company's books and smaller provisions for refund were recorded
203 in December of 2012. I have included a copy of the Company's response to AG
204 4.01 within AG Exhibit 1.7R.

205 **Q. How do the GAAP accounting rules that require recognition of revenue refund**
206 **obligations impact formula ratemaking in Illinois?**

207 A. If refundable revenues are eliminated on the books as a result of accounting entries
208 that recognize the utility's refund obligation, it is possible that any revenue refund
209 ordered in this Docket may have the effect of reducing future recorded revenues in
210 a year subject to formula ratemaking. In ComEd's case, where the previously
211 recorded accruals to recognize potential Rider AMP refunds were reversed on the
212 books in September of 2011, it is possible that a refund order in this Docket would
213 require a newly recorded reduction to revenues at the time of that order. This could,

214 in turn, create a situation where any Rider AMP refund is improperly recouped by
215 the Company through higher future formula rate calculations.

216 **Q. Should the Commission specify that ComEd not recoup the Rider AMP**
217 **refunded revenues in any future formula rate case?**

218 A. Yes. Allowing future formula rate recovery of refunded Rider AMP revenue
219 amounts would undermine the purpose of the refund.

220 **Q. Do you know if ComEd contends that rate refunds that may be ordered by the**
221 **Commission in connection with Rider AMP should or will have any impact**
222 **upon EIMA formula ratemaking calculations?**

223 A. This question was asked of the Company in data request AG 4.02 and ComEd
224 responded, "In the event that the Commission were to order a rate refund relating to
225 Rider AMP, ComEd is unable to speculate as to whether or to what extent such an
226 order might include any provision relating to rates set through the EIMA formula
227 ratemaking process. That being said, ComEd currently does not anticipate that such
228 an order would affect the EIMA formula ratemaking calculation." A copy of this
229 response is included within AG Exhibit 1.8R. It is not clear from this response
230 whether ComEd's proposed future formula rate case revenue requirements may be
231 impacted by any Rider AMP refunds ordered by the Commission. To preclude
232 improper formula rate recoupment of any ordered Rider AMP refunds, I
233 recommend that the Commission's Order in this docket clearly state that entries to
234 record such refunds be eliminated in the calculation of future ComEd formula rates.

235 **.Q. Does this conclude your testimony at this time?**

236 A. Yes.